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Before the FEDERAL COMMUNICATIONS COMMISSION  
FEDERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY  
Washington, D.C. 20554

In Re Applications of: ) MM Docket No.: 96-117  
)  
WPVG, INC. ) File No.: BR-950601VH  
)  
For Renewal of License )  
for Station WPVG (AM) )  
Funkstown, Maryland )

Courtroom 3, Suite 201  
Federal Communications  
Commission  
2000 L Street, N.W.  
Washington, D.C.

Tuesday,  
July 9, 1996

The parties met, pursuant to the notice of the  
Judge, at 8:58 a.m.

BEFORE: HON. ARTHUR I. STEINBERG  
Administrative Law Judge

APPEARANCES:

For the Licensee:

ROY F. PERKINS, JR., ESQ.  
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For the Commission:

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For the Commission (continued):

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P R O C E E D I N G S

1  
2 JUDGE STEINBERG: We are on the record. This is a  
3 pre-hearing conference in MM Docket Number 96-117, involving  
4 the application of WPVG, Inc., for renewal of license of  
5 WPVG (AM), Funkstown, Maryland. The case was designated for  
6 hearing on May 22, 1996. By order released May 30, 1996,  
7 the chief administrative law judge assigned the case to me  
8 and set the date of the hearing for September 25.

9 An order prior to pre-hearing conference was  
10 released on June 6, 1996. Therein, counsel for the parties  
11 were directed to confer for certain purposes and a  
12 procedural schedule was established.

13 Let me first take the appearances for WPVG, Inc.

14 MR. PERKINS: Roy F. Perkins, Jr.

15 JUDGE STEINBERG: And for the Chief, Mass Media  
16 Bureau?

17 MR. ARONOWITZ: Alan Aronowitz, with Bob Zauner.

18 JUDGE STEINBERG: Is that the law firm of Bob  
19 Zauner, or what?

20 MR. ARONOWITZ: The illustrious law firm.

21 JUDGE STEINBERG: Okay, the only pending matter  
22 that -- at least pending before me, is an environmental  
23 statement filed by WPVG on May 30, 1996. Incidentally, I  
24 assume it was filed. I have not gotten a stamped copy.

25 Do you have a stamped copy of that, Mr. Perkins?

1 MR. PERKINS: I do not know if I do or not.

2 JUDGE STEINBERG: Or does the Bureau have one?

3 MR. PERKINS: I filed that and that was taken  
4 right out of the application that is on file for the new  
5 site.

6 JUDGE STEINBERG: Yes. You know, I have the  
7 service copy, but I never did get -- in the mail, usually,  
8 we get a stamped copy a few days later. It used to be the  
9 next day. But I can check --

10 MR. PERKINS: I do not recall the procedure on  
11 that. I think I submitted it, under a letter, directly to  
12 you, if I remember correctly. I really do not recall.  
13 Whatever the hearing order said, I did.

14 JUDGE STEINBERG: Yes, I got it. It was directed  
15 to me, but -- so, you may not have filed it with the  
16 Secretary's Office?

17 MR. PERKINS: No, it is already filed as part of  
18 the application.

19 JUDGE STEINBERG: Okay. Well, then, I do not --

20 MR. PERKINS: It was not something that had to be  
21 prepared for the purpose. It had already been done.

22 JUDGE STEINBERG: Okay. The way I read the HDO, I  
23 do not have to take any action on it. That the Bureau  
24 reviews it and then notifies me or informs me when a  
25 determination is made that the operation will not have a

1 significant environmental impact.

2 And I wanted to ask the Bureau what the status of  
3 that was, if you know?

4 MR. ARONOWITZ: Excuse me, Your Honor?

5 JUDGE STEINBERG: What the status of that  
6 environmental statement is? Because you guys have to notify  
7 me, or somebody has got to notify me --

8 MR. ARONOWITZ: Ah, it --

9 JUDGE STEINBERG: -- when it is determined that  
10 there will be no significant environmental impact.

11 MR. ARONOWITZ: Well, it is my understanding that  
12 the Bureau is working on this, along with the modification  
13 application. And although I do not directly know at this  
14 time, my presumption is that -- Mr. Perkins told me this  
15 morning that he had heard from the Bureau and they had some  
16 questions. And at such time as that is all resolved, I  
17 would imagine that they would be issuing something on the  
18 environmental statement, as well as some other information.

19 And while you were discussing that, I was just  
20 looking the file. I have a copy of a May 30 filing to the  
21 Secretary that purports to be a request to remain silent for  
22 an additional --

23 JUDGE STEINBERG: Right.

24 MR. ARONOWITZ: -- six months. An anti-drug abuse  
25 thing, an environmental statement. Ah, so --

1 JUDGE STEINBERG: Okay, you have got that stamped,  
2 stamped in?

3 MR. ARONOWITZ: Well, I have one stamped in at our  
4 office --

5 JUDGE STEINBERG: Okay.

6 MR. ARONOWITZ: at the Enforcement. I do not have  
7 a Commission stamp. But I was trying to determine whether  
8 Mr. Perkins --

9 JUDGE STEINBERG: Yes.

10 MR. ARONOWITZ: -- filed that with you or with the  
11 Secretary?

12 JUDGE STEINBERG: Okay.

13 MR. PERKINS: Which particular item? I filed so  
14 many.

15 MR. ARONOWITZ: Ah --

16 JUDGE STEINBERG: Well, the one that I am  
17 concerned with is the environmental statement. And, you  
18 know, you also filed a notice of appearance on that same  
19 day.

20 MR. PERKINS: Yes.

21 JUDGE STEINBERG: And I do not have a stamped copy  
22 of that, either.

23 MR. PERKINS: That I cannot explain, Your Honor,  
24 because that -- I can no longer recall. I had a --

25 JUDGE STEINBERG: You know, I would assume that

1 you just carted them both over and handed them in at the  
2 same time. I mean, that is what you usually would do.

3 MR. PERKINS: I may have sent them in by mail.

4 JUDGE STEINBERG: Okay.

5 MR. PERKINS: It depends on whether something is  
6 time sensitive or not. If it is not, I will send it in by  
7 mail.

8 JUDGE STEINBERG: Yes. Well --

9 MR. ARONOWITZ: Well, yes, according -- excuse me.

10 JUDGE STEINBERG: These were way early, so I would  
11 -- you know, you filed them way early, so I --

12 MR. PERKINS: But there was an occasion that I had  
13 something that was time sensitive, and when I -- what was  
14 the date that that was filed?

15 JUDGE STEINBERG: May 30.

16 MR. PERKINS: That was filed in the Secretary's  
17 Office, I believe, because I had other things going in that  
18 were due May 31, with a due date on them.

19 JUDGE STEINBERG: Okay.

20 MR. PERKINS: And so I gathered everything  
21 together on that particular day. That was filed in the  
22 Secretary's Office, to the best of my knowledge.

23 JUDGE STEINBERG: Okay.

24 MR. ARONOWITZ: And, in fact, I have a certificate  
25 of service here which purports to say that it was, in fact,

1 filed in the Secretary's Office on the 30th of May, with a  
2 copy to Your Honor.

3 (Brief consultation with Mr. Zauner.)

4 MR. PERKINS: But I particularly remember May 30.  
5 I had things due on the 31st; specifically, annual  
6 employment reports. May 31 was the deadline and that was --  
7 this goes to the Secretary's Office.

8 JUDGE STEINBERG: Well, all of this might not  
9 matter. But, anyway, if the Bureau would keep after whoever  
10 reviews these things, because, if my memory serves me --  
11 from ancient times when we did this routinely -- these  
12 notifications sometimes held up the whole case. Where  
13 everything was ready, and we were just waiting for the  
14 Bureau to send a judge a letter saying there is no adverse  
15 environmental impact.

16 So, if you just keep on the people over there.  
17 And if I remember, all I get is a letter saying, we have  
18 reviewed it and it looks okay.

19 Okay, anything else that is pending that I ought  
20 to know about? I mean, I do not have to act on any of this.

21 MR. PERKINS: No. No, the application for the new  
22 transmitter site is pending. We know that it has received  
23 expedited action because we have gotten a deficiency letter  
24 with respect to it. And that letter would have had a 30 day  
25 deadline on it, but we might have to ask to extend that

1 because I understand that one minor short separation problem  
2 to a station in Pennsylvania has to be resolved with  
3 measurement data, field measurements. So, we might be  
4 asking for a little more time; I do not know.

5           Going back to the matter of environmental impact,  
6 one way you will know that our environmental statement was  
7 okay is when they grant the application, of which it was a  
8 part.

9           JUDGE STEINBERG: Well, you know, I have another  
10 question. You have got an application pending to modify  
11 your license, to change sites and other stuff. Meanwhile,  
12 we have got the hearing going on. And it seems to me like  
13 there is something inconsistent there, which I cannot -- I  
14 mean, as far as I am concerned, I have got my marching  
15 orders. And my marching orders are, we are going to have  
16 the hearing on September 25. And I set procedural dates,  
17 and those are at least -- let me put it this way.

18           The September 25 hearing date is firm. The dates  
19 in between can be moved around to accommodate the parties.  
20 I do not want to move them around, but they can be moved  
21 around to accommodate the parties. But we will go to  
22 hearing on September 25, as far as I am concerned.

23           MR. PERKINS: I would like to have a longer date,  
24 because I think the case ultimately should be resolved by  
25 summary decision.

1 JUDGE STEINBERG: Well, whether it is or it is  
2 not, I will tell you now -- and as I said in the order prior  
3 to the pre-hearing conference -- the September 25 date is  
4 firm. So, you can prepare with that date in mind. And if  
5 something happens in between and you can file a motion for  
6 summary decision or a joint motion for summary decision,  
7 that is fine. But I am not going to delay the September 25  
8 date.

9 Is that pretty clear? Mr. Aronowitz?

10 MR. ARONOWITZ: Yes, Your Honor.

11 JUDGE STEINBERG: Mr. Perkins?

12 MR. PERKINS: Yes, it is. If we file for summary  
13 decision, could we then ask you to postpone the hearing  
14 date?

15 JUDGE STEINBERG: It depends. I might. I might  
16 not.

17 MR. PERKINS: Okay.

18 JUDGE STEINBERG: If it is a joint motion, then,  
19 of course, there is really nothing left to litigate.

20 MR. PERKINS: Okay.

21 JUDGE STEINBERG: Unless I happen to spot  
22 something, which occasionally happens. But I am not going  
23 to prejudge that.

24 If it is a contested motion, you can expect to go  
25 to hearing on September 25. Even if the motion is pending.

1 So, you know, I do not think you are going to file something  
2 -- when is it 20 days -- on September 5 and expect that the  
3 hearing will be postponed while I act on it, because it will  
4 not. If it is contested.

5 MR. ARONOWITZ: Certainly, Your Honor. And, in  
6 fact, inasmuch as it is Mr. Perkins' burden to go forward,  
7 the Bureau will wait until that time. I mean, one thing  
8 that I also want to mention and clearly the grant of the  
9 modification application, expeditious building, could  
10 certainly obviate the need for a hearing.

11 One of the big concerns here is -- and it  
12 certainly is something that Mr. Perkins's client needs to be  
13 aware of, one way or another -- in light of the silence of  
14 this station, the authorization will be revoked by operation  
15 of law on February 8, 1997, under the Telecom Act, should  
16 this not be built. So, we are looking at a fairly tight  
17 time frame.

18 MR. PERKINS: I understand.

19 MR. ARONOWITZ: And that includes that the  
20 modification application will be granted and implemented.  
21 Mr. Perkins has put in his request for expedited processing,  
22 and appears to be receiving that. So, that is one thing  
23 that we are keeping in the back of our minds.

24 JUDGE STEINBERG: Does the Telecom Act give the  
25 Commission authority just to waive that one year?

1 MR. ARONOWITZ: No. No, Your Honor, it is --

2 JUDGE STEINBERG: So that, if a station is silent  
3 for one year -- what if it is silent pursuant to Commission  
4 authority?

5 MR. ARONOWITZ: That would be unauthorized silence  
6 for a year.

7 JUDGE STEINBERG: Okay. I do not --

8 MR. ARONOWITZ: Oh, no, no, no, no. Excuse me, I  
9 am sorry. It is silence. It is just not in operation --

10 JUDGE STEINBERG: Even if it is authorized?

11 MR. ARONOWITZ: -- for a year. Even if it is  
12 authorized.

13 JUDGE STEINBERG: Okay.

14 MR. PERKINS: The license is --

15 MR. ARONOWITZ: In fact, in a public notice that  
16 was issued on May 22, 1996, the Commission emphasized that  
17 it does not have discretion in this area. And modification  
18 applications, extensions --

19 JUDGE STEINBERG: Yes.

20 MR. ARONOWITZ: -- and so on and so forth, must be  
21 filed, granted and implemented within that one year date.  
22 Within that one year time frame.

23 JUDGE STEINBERG: Okay. Now, did you guys confer  
24 like I asked you to?

25 MR. PERKINS: I am sorry, Your Honor.

1 JUDGE STEINBERG: Did you --

2 MR. PERKINS: I realized there is an order by you  
3 of which I do not have a copy. Which I have never seen.

4 JUDGE STEINBERG: And you do not have the order  
5 prior to the pre-hearing conference?

6 MR. PERKINS: No, I do not. I realized, as you  
7 were talking this morning, that there was something missing  
8 here. So, I am sorry, we have not conferred, except that  
9 Mr. Aronowitz and I spoke last week about something  
10 pertaining to this case, but not the kind of conference you  
11 are talking about.

12 JUDGE STEINBERG: Okay. Let us go off the record.

13 (Off the record from 9:10 to 9:15 a.m.)

14 JUDGE STEINBERG: We are back on the record.

15 While we were off the record, Mr. Perkins reviewed the order  
16 prior to pre-hearing conference and we also talked a little  
17 bit about possible ways to settle this case through -- well,  
18 I will just leave it there. Possible ways to settle this  
19 case. And counsel for the Bureau and counsel for the  
20 Licensee will discuss this.

21 With respect to discovery, is there any kind of  
22 discovery contemplated?

23 MR. PERKINS: I do not contemplate any, speaking  
24 for WPVG.

25 JUDGE STEINBERG: Okay.

1 MR. ARONOWITZ: I am not aware of any at this  
2 time.

3 JUDGE STEINBERG: Okay. So, if there is any kind  
4 of discovery in the future, if you reach a disagreement,  
5 work it out among yourselves. If you cannot work it out,  
6 then come to me. But only come to me if you hit a brick  
7 wall. I do not want to be ruling on a lot of unnecessary  
8 discovery stuff. But I do not see that here.

9 Okay, any other things we have to talk about  
10 today? Mr. Perkins?

11 MR. PERKINS: I have none, Your Honor.

12 JUDGE STEINBERG: Mr. Aronowitz?

13 MR. ARONOWITZ: None.

14 JUDGE STEINBERG: Okay. Then, what we will do is,  
15 we will be in recess until September 25, at which time we  
16 will convene for the hearing. I did not set an admissions  
17 session for this case. And, you know, hopefully, this thing  
18 will be worked out and we will not have to go to hearing.  
19 But if we do, we do.

20 MR. PERKINS: Well, I must say, Your Honor, I  
21 think if we went to hearing, it would be a very short  
22 hearing. I do not really know what to put in the hearing  
23 exhibits for a case like this, but, whatever it is, it would  
24 not be much.

25 JUDGE STEINBERG: Okay. Well --

1 MR. ARONOWITZ: All the more reason to resolve it.

2 MR. PERKINS: Oh, yes, sure.

3 JUDGE STEINBERG: Oh, I do not see any reason why  
4 it cannot be resolved, given the Licensee's progress and the  
5 Bureau's statements here today.

6 Okay, then, we will go off the record now. Thank  
7 you.

8 MR. PERKINS: Thank you, Your Honor.

9 MR. ARONOWITZ: Thank you, Your Honor.

10 (Whereupon, at 9:18 a.m., the proceeding was  
11 concluded.)

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**REPORTER'S CERTIFICATE**

FCC DOCKET NO.: 96-117  
CASE TITLE: WPVG, Inc.  
HEARING DATE: July 9, 1996  
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 07/09/96

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**TRANSCRIBER'S CERTIFICATE**

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 07/09/96

Gary A. Sabel  
Official Transcriber  
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Gary Alan Sabel

**PROOFREADER'S CERTIFICATE**

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 07/10/96

Don R. Jennings  
Official Proofreader  
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